

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

FILED  
IN CLERKS OFFICE  
2005 JAN 28 P 1:14

U.S. DISTRICT COURT  
DISTRICT OF MASS.

In the Matter of the Arbitration Between: )  
)  
ARGONAUT INSURANCE COMPANY )  
)  
Respondent (Plaintiff herein) )  
)  
vs. )  
)  
FIRST STATE INSURANCE COMPANY )  
)  
Petitioner (Defendant herein) )  
)  
\_\_\_\_\_ )

05-10184 RCL  
Civil Action No:

**PETITION OF ARGONAUT INSURANCE COMPANY**  
**TO CONFIRM ARBITRATION AWARD AND FOR**  
**THE ENTRY OF JUDGMENT THEREON**

FILED FEE PAID:  
EIP# 61728  
COUNTS 150.00  
COURTY CLK E.O.  
1/31/2005

1. Plaintiff Argonaut Insurance Company ("Argonaut") is a corporation incorporated under the laws of the State of California, having its principal place of business at 250 Middlefield Road, Menlo Park, California.
2. Upon information and belief, Defendant First State Insurance Company ("First State") is a corporation incorporated under the laws of the Commonwealth of Massachusetts, having its principal place of business in Boston, Massachusetts.
3. The value of the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.
4. Under 28 U.S.C. § 1332, the Court has subject matter jurisdiction over this matter.

**VENUE**

5. Under 9 U.S.C. § 9, venue is proper in this judicial district because the arbitration proceedings that resulted in the award for which Argonaut is seeking confirmation were conducted in this judicial district.

**BACKGROUND**

6. First State and Argonaut are in the business of insurance and reinsurance, among other things.

7. Prior to March 2002, disputes arose between First State and Argonaut regarding the parties' respective rights and obligations under certain ceded claims.

8. On or about March 13, 2002, First State demanded arbitration against Argonaut, pursuant to the terms of the following contracts between First State and Argonaut, including contracts identified by the parties as subject to the arbitration, as follows:

- First Casualty Excess of Loss: 1/1/75 to 12/31/75.
- Second Casualty Excess of Loss: 1/1/75 to 3/31/75.
- Third Casualty Excess of Loss: 1/1/73 to 12/31/73;  
1/1/74 to 12/31/74; 1/1/75 to 3/31/75.
- Fourth Casualty Excess of Loss: 1/1/71 to 12/31/71;  
1/1/72 to 12/31/72.

9. The Contracts thereunder evidence transactions involving interstate commerce as they are between corporations headquartered in different states and contemplate performance therein. *See* Declaration of Donald J. Buyck at 4 and Exhibits 2 through 5 attached thereto.

10. First State and Argonaut proceeded to appoint a panel of arbitrators (the "Arbitration Panel"). The Arbitration Panel was comprised of Edmond Rondepierre, Arthur Brotter, and Paul Walther. During the arbitration proceeding, the parties conducted discovery and presented briefs and evidentiary exhibits to the Arbitration Panel.

11. The parties then participated in an Arbitration Hearing before the Arbitration Panel to resolve their dispute.

12. On or about April 20-23, 2004, the parties presented witness testimony, documentary evidence, and arguments of counsel to the Arbitration Panel at a hearing on the issues. The hearing was conducted in Boston, Massachusetts.

13. On or about July 20, 2004, the Arbitration Panel issued a written Arbitration Award, granting final judgment and ordering Argonaut to pay First State \$259,213.95.

14. The July 20, 2004 Arbitration Award has not been vacated or modified since issued.

15. Under 9 U.S.C. § 12, First State had three months within which to serve a notice of motion to vacate, modify, or correct the July 20, 2004 Arbitration Award. The time allowed for First State to serve a notice of motion to vacate, modify, or correct the Award has expired.

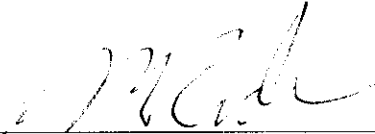
16. First State has not served a notice of motion to vacate, modify, or correct the July 20, 2004 Arbitration Award.

**WHEREFORE**, Argonaut moves that the Court, pursuant to the Federal Arbitration Act, 9 U.S.C. § 9, and M.G.L.A., 251 § 11, to enter an Order confirming the

July 20, 2004 Arbitration Award and entering judgment thereon. A proposed Order and Judgment is submitted with this Petition.

Respectfully submitted,

ARGONAUT INSURANCE COMPANY



---

Kevin M. Roche  
HALLORAN & SAGE LLP  
One Goodwin Square  
225 Asylum Street  
Hartford, CT 06103  
(860) 522-6103 (Telephone)  
(860) 548-0006 (Facsimile)

*Of counsel:*

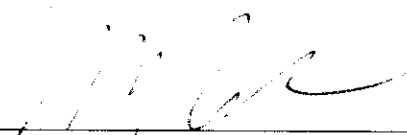
Theresa W. Hajost  
HALLORAN & SAGE LLP  
1730 Pennsylvania Avenue, NW  
Suite 800  
Washington, DC 20006  
(202) 496-9270 (Telephone)  
(202) 496-9279 (Facsimile)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_\_ day of January, 2005, a copy of the foregoing Petition of Argonaut Insurance Company to Confirm Arbitration Award and for the Entry of Judgment Thereon was forwarded, postage pre-paid, via First Class mail, to:

Lloyd A. Gura, Esquire  
Mound Cotton Wollan & Greengrass  
One Battery Park Plaza  
24 Whitehall Street  
New York, NY 10004  
*Counsel for First State Insurance Company*

First State Insurance Company  
c/o First State Management Group  
150 Federal Street, 6<sup>th</sup> Floor  
Boston, MA 02110  
(via Certified Mail/Return Receipt Requested)

  
\_\_\_\_\_  
Kevin M. Roche  
Counsel for Argonaut Insurance Company

JS 44 (Rev. 11/04)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> ARGONAUT INSURANCE COMPANY  <b>(b) County of Residence of First Listed Plaintiff</b> <u>Menlo Park, California</u> (EXCEPT IN U.S. PLAINTIFF CASES)  <b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Kevin Roche, Esq., Halloran & Sage, One Goodwin Square, Hartford, CT 06103; 860.522.6103	<b>DEFENDANTS</b> FIRST STATE INSURANCE COMPANY 2005 JAN 28 P 1:14 <b>County of Residence of First Listed Defendant</b> <u>Boston, Massachusetts</u> <b>U.S. DISTRICT COURT</b> DISTRICT OF MASSACHUSETTS NOTE: IN NON-DEPORTATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  Attorneys (If Known) Lloyd Gura, Esq., Mound Cotton, One Battery Park Plaza, NY NY 10004		
<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)  <table style="width: 100%;"> <tr> <td style="width: 50%;">           Citizen of This State <input type="checkbox"/> 1            Citizen of Another State <input type="checkbox"/> 2            Citizen or Subject of a Foreign Country <input type="checkbox"/> 3         </td> <td style="width: 50%;">           Incorporated or Principal Place of Business in This State <input type="checkbox"/> 1            Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 2            Foreign Nation <input type="checkbox"/> 3         </td> </tr> </table>	Citizen of This State <input type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	Incorporated or Principal Place of Business in This State <input type="checkbox"/> 1 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 2 Foreign Nation <input type="checkbox"/> 3
Citizen of This State <input type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	Incorporated or Principal Place of Business in This State <input type="checkbox"/> 1 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 2 Foreign Nation <input type="checkbox"/> 3		


IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 319 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

<b>V. ORIGIN</b> (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 USC § 1332</u> Brief description of cause: <u>Breach of Contract</u>
----------------------------	--

<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ _____	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input type="checkbox"/> No
-------------------------------------	--	-----------------	---

<b>VIII. RELATED CASE(S) IF ANY</b>	(See instructions): JUDGE _____	DOCKET NUMBER _____
-------------------------------------	---------------------------------	---------------------

DATE 01/21/2005	SIGNATURE OF ATTORNEY OF RECORD 
--------------------	--

RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____
-----------------	--------------	--------------------	-------------	------------------

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Argonaut Insurance Company vs. First State Insurance Company
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R 23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☐ NO ☒
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐ N/A
- (PLEASE TYPE OR PRINT)
- ATTORNEY'S NAME Kevin M. Roche, Halloran & Sage LLP
- ADDRESS 225 Asylum Street, Hartford, CT 06103
- TELEPHONE NO. (860) 297-4605

05 10184 RCL

**HALLORAN  
& SAGE LLP**  
ATTORNEYS AT LAW

**FAX COVER SHEET**

**TO:** Matt  
**FROM:** Norine Lord  
**FAX NUMBER:** (617) 748-9096  
**FILE NUMBER:** 00066.0029  
**DATE:** 01/31/05

05 10184 RCL

**NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 2**

**MESSAGE:** Matt, please let me know if you need anything else to get this filed. Thanks so much!! Norine Lord

**ORIGINAL WILL NOT FOLLOW\_**

**ORIGINAL WILL FOLLOW BY REGULAR U.S. FIRST CLASS MAIL \_\_\_ OTHER\_\_\_**

**WE ARE TRANSMITTING FROM A CANON CFX-L4000. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (860) 522-6103.**

**CONFIDENTIALITY: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE AND IS PRIVILEGED AND CONFIDENTIAL. ANY DISSEMINATION, DISTRIBUTION, OR COPY OF THIS COMMUNICATION OTHER THAN TO THE INDIVIDUAL OR ENTITY NAMED ABOVE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE (AND ANY COPIES) TO THE SENDER ABOVE. THANK YOU FOR YOUR ASSISTANCE.**



**HALLORAN  
& SAGE LLP**  
ATTORNEYS AT LAW

FILED  
CLERKS OFFICE

KEVIN M. ROCHE Direct 860 297-4605 roche@halloran-sage.com  
Also admitted in Massachusetts

2005 JAN 28 P 1:14

U.S. DISTRICT COURT  
DISTRICT OF MASS

January 26, 2005

Clerk, U.S. District Court  
District of Massachusetts  
United States Courthouse  
1 Courthouse Way – Suite 2300  
Boston, MA 02210

10184 RCL

Re: **Argonaut Insurance Company vs. First State Insurance Company**  
Our File No. : 00066.0029

Dear Sir or Madam:

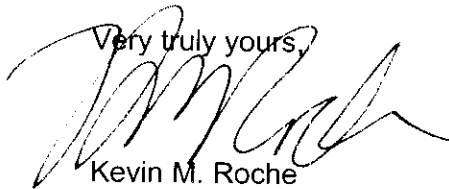
Enclosed for filing please find an original and one copy of the following documents:

- 1) Civil Cover Sheet;
- 2) Motion to Impound;
- 3) Motion for an Order Confirming Arbitration Award and Entry of Judgment;
- 4) Petition to Confirm Arbitration Award; and
- 5) Memorandum in Support of Petition to Confirm Arbitration Award.

I have also enclosed our firm's check in the amount of \$150.00 for the filing fee. After filing, please return a stamped copy of the enclosed documents to our office in the enclosed, self-addressed, stamped envelope.

Should you have any questions regarding this, please do not hesitate to contact me. Thank you in advance for your assistance.

Very truly yours,



Kevin M. Roche

KMR/nbl  
Enclosures